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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Oliver Charles Schuepbach

Serial No.: 09/942,192 10/631,095

Filed: 07/31/2003

Docket No.: TI-33782

Examiner: TBD

Art Unit: TBD

Conf. No.: 3490

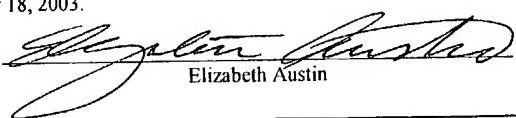
For: RSSE OPTIMIZATION USING HARDWARE ACCELERATION

PETITION FOR REVIEW OF REFUSAL TO GRANT FILING DATE -37 C.F.R. § 1.181(f)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

MAILING CERTIFICATE UNDER 37 CFR § 1.8(a)

I hereby certify, that on this date, this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Alexandria, VA 22313-1450 on November 18, 2003.


Elizabeth Austin

Dear Sir:

Applicant respectfully Petitions for review of the USPTO's refusal to grant a filing date of July 31, 2003 to Application Number 10/631,095, for the reasons set forth below.

ARGUMENT

Applicant filed US Patent Application 10/631,095 on July 31, 2003. On October 28, 2003, a NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION was mailed to Applicants. The reason provided in the NOTICE for the incompleteness of the application, is set forth as:

11/28/2003 AHONDAF1 00000034 200668 09942192

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The application was deposited without drawings. 35 U.S.C. 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented." Applicant should reconsider whether the drawings are necessary under 35 U.S.C. 113 (first sentence).

The above NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION was quite a surprise to Applicant who submitted formal drawings with the nonprovisional application on July 31, 2003. Applicant respectfully submits that the NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION was issued in error and should be withdrawn in view of the following Facts and Reasons Why the NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION is Improper. Applicant further requests that Application Number 10/631,095 be granted the filing date of July 31, 2003.

THE FACTS:

- 1) Applicant filed a Nonprovisional Application for U.S. Patent Application 10/631,095 titled RSEE OPTIMIZATION USING HARDWARE ACCELERATION on August 31, 2003, which included: (a) a New Application Transmittal, (b) a Declaration – Power of Attorney; (c) an Assignment & Recordation Cover Sheet; (d) Formal Drawings; and (e) an IDS with References (ATTACHMENT-1).
- 2) Applicant filed, in addition to the above, a return-address card listing those items being concurrently submitted to the USPTO on July 31, 2003 (ATTACHMENT-2). As can be seen on the return, the USPTO date stamped the postcard receipt indicating that FORMAL DRAWINGS had been received.
- 3) Presumably, the USPTO lost or misplaced the above-identified FORMAL DRAWINGS since it mailed a NOTICE OF INCOMPLETE

NONPROVISIONAL APPLICATION to Applicant on October 28, 2003 (ATTACHMENT-3), indicating that no drawings were filed with the application.

REASONS WHY THE NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION IS IMPROPER AND THE APPLICATION SHOULD BE GRANTED A FILING DATE OF JULY 31, 2003:

The USPTO's determination in #3 above is erroneous and does not reflect the record in this case. The return address card (ATTACHMENT-2) clearly shows that Applicant filed formal drawings with the nonprovisional application submitted to the USPTO on July 31, 2003.

For the above reasons, Applicant requests that the Notice of Incomplete Nonprovisional Application mailed on October 28, 2003 be vacated and that application number 10/631,095 be accorded a filing date of July 31, 2002. Applicant further requests that the application be assigned for examination in a timely manner.

Pursuant to the requirements of 37 C.F.R. § 1.181(f), please charge the \$130.00 petition fee set forth in 37 C.F.R. § 1.17(h) to Deposit Account No. 20-0668. Three copies of this sheet are enclosed.

Further, being that no defect exists since formal drawings were filed with nonprovisional application 10/631,095 on July 31, 2003, APPLICANT RESPECTFULLY REQUESTS A REFUND OF THE PETITION FEE.

No additional Extension of Time or Petition fee should be required since the Petition is being filed within two months from the date the NOTICE was mailed.

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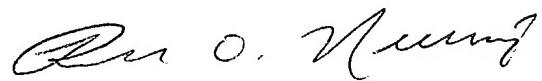
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OFFICE OF PETITIONS

Nevertheless, if the USPTO determines that a fee is required, please charge the fee to
Deposit Account No. 20-0668.

Respectfully submitted,



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Attorney for Applicant

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